INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	4
Argument	4
Conclusion	5

CITATION

Case:

Helvering v. *John H. Therrell*, No. 128, present term 4

29252—37

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 129

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM H. TUNNICLIFFE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The memorandum opinion of the United States Board of Tax Appeals (R. 15–21) is not reported. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 29) is reported in 88 F. (2d) 873.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 9, 1937 (R. 29). Petition for certiorari was filed June 9, 1937, and was granted

October 11, 1937 (R. 31). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether amounts received by the respondent as compensation for services rendered as liquidator of certain Florida State banks and paid entirely out of funds of the banks are immune from Federal taxation on the ground that such a tax would be an unconstitutional burden upon the State.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations will be found in the Appendix of the petitioner's brief in the case of *Guy T. Helvering, Commissioner of Internal Revenue* v. *John H. Therrell, also known as J. H. Therrell,* No. 128, filed with the Court simultaneously herewith.

STATEMENT

The material facts as they appear in the memorandum opinion of the Board of Tax Appeals (R. 15–21) may be summarized as follows:

The respondent, in 1930, was appointed liquidator of eleven banks in the State of Florida, by the Comptroller of the State of Florida, pursuant to the provisions of Section 19, General Laws of Florida (1929), Vol. I, c. 13576, amending Section 4162, Revised General Statutes (R. 16).

The respondent, on being appointed liquidator, took no oath of office, but gave a bond under each

appointment (R. 17). He served as liquidator of some or all of the eleven banks during the years 1931 and 1932 and received as compensation for his services as liquidator $5,833.33 in 1931, and $25,-237.36 in 1932 (R. 17–18). This compensation was fixed by the Comptroller of the State of Florida at a certain percentage of the funds collected by him in liquidating the various banks pursuant to the General Laws of Florida (1929), Vol. I, c. 13576, Sec. 19, amending Section 4162, Revised General Statutes, and represented about two and one-half percent of the funds collected by the respondent in disposing of the assets of the liquidating banks, and was paid out of funds of the institutions liquidated (R. 18).

In the performance of his duties as liquidator the respondent acted under the immediate supervision and direction of the State Comptroller (R. 18) and devoted all of his time to his duties as liquidator in both of the taxable years involved (R. 18).

The respondent did not include in his income tax returns for 1931 or 1932 the compensation received by him for services as liquidator, upon the advice of the Internal Revenue Agent In Charge at Jacksonville, Florida (R. 18). The Commissioner of Internal Revenue included the sums received by the respondent as liquidator in his taxable income for Federal income tax purposes. The Board of Tax Appeals, holding that the petitioner was

neither an officer nor employee of the State of Florida, but an independent contractor (R. 19) and further that a Federal income tax imposed upon the income realized by the respondent as liquidator of state banks imposes no burden on the State of Florida prohibited under the Constitution (R. 19), determined deficiencies in respondent's income for the years 1931 and 1932 of $34.66 and $2,689.12, respectively (R. 21). The Circuit Court of Appeals, one judge dissenting, reversed the decision of the Board of Tax Appeals.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the compensation received by the respondent as liquidator was not subject to Federal income taxation.

2. In failing to hold that the respondent was neither an officer, an employee, nor an agent of the State engaged in an essential governmental function.

3. In failing to hold that taxation of the compensation received by the respondent out of funds of the insolvent banks imposes no prohibited burden upon the State.

ARGUMENT

This case presents, on indistinguishable facts, the identical question presented in *Guy T. Helvering, Commissioner of Internal Revenue* v. *John H. Therrell, also known as J. H. Therrell,* pending on

writ of certiorari, No. 128, present term. In the interest of brevity, the petitioner adopts and incorporates herein by reference the argument made on behalf of the petitioner in No. 128.

CONCLUSION

The decision of the Circuit Court of Appeals is erroneous and should be reversed.

Respectfully submitted.

STANLEY REED,
Solicitor General.
JAMES W. MORRIS,
Assistant Attorney General.
SEWALL KEY,
BERRYMAN GREEN,
Special Assistants to the Attorney General.
WARNER W. GARDNER,
Special Attorney.

NOVEMBER 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937